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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 25, 73, and 74

[GN Docket No. 15-236; DA 17-562]

**Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical
Radio Licensees**

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: In this Order on Reconsideration, the Federal Communications Commission (Commission) dismisses a petition for reconsideration filed in this rulemaking proceeding by William J. Kirsch. This action was taken on delegated authority jointly by the Acting Chief, International Bureau, and the Chief, Media Bureau.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gabrielle Kim or Francis Gutierrez, Telecommunications and Analysis Division, International Bureau, FCC, (202) 418-1480 or via email to Gabrielle.Kim@fcc.gov, Francis.Gutierrez@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in GN Docket No. 15-236, DA 17-562, adopted and released on June 8, 2017. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). The document also is available for download over the

Internet at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0608/DA-17-562A1.pdf.

Synopsis

1. In the 2016 Foreign Ownership Report and Order, 81 FR 86586, the Commission modified the foreign ownership filing and review process for broadcast licensees by extending the streamlined procedures developed for foreign ownership reviews for common carrier and certain aeronautical licensees under section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), to the broadcast context with certain limited exceptions. The Commission also reformed the methodology used by both common carrier and broadcast licensees that are, or are controlled by, U.S. public companies to assess compliance with the foreign ownership restrictions in section 310(b)(3) and 310(b)(4) of the Act, respectively. In response, a petition for reconsideration (Petition) was filed by William J. Kirsch (Petitioner) asserting that the Commission did not address the concerns he had raised earlier in the proceeding in response to the 2015 Foreign Ownership NPRM, 80 FR 68815.

2. The Order on Reconsideration dismisses the Petition because it does not meet the requirements of section 1.429 of the Commission’s rules and plainly does not warrant consideration by the Commission. More specifically, the Petition fails to state with particularity the respects in which the Petitioner believes the action taken by the Commission in the 2016 Foreign Ownership Report and Order should be changed; relies on arguments that the Commission fully considered and rejected; relates to matters outside the scope of the proceeding; and fails to identify any material error, omission, or reason warranting reconsideration. This action was taken by the International Bureau and the Media Bureau pursuant to delegated authority under section 1.429(l) of the Commission’s rules.

3. The Order on Reconsideration finds the Petition fails to state with particularity the respects in which Petitioner believes the Commission's action in the 2016 Foreign Ownership Report and Order should be changed. The Order on Reconsideration notes that the Petition only consists of generalized claims and requests and offers no evidence or analysis to support the assertions. To the extent the Petition's assertions can be construed as requesting that the Commission adopt a reciprocity standard in the broadcast context, the Petition does not explain with any specificity how the Commission would make changes to implement such a reciprocity standard. Nor does it address how the 2016 Foreign Ownership Report and Order changes existing Commission policy and precedent with respect to the agency's evaluation of foreign ownership of broadcast licensees in this respect, which requires the Commission to assess, in each particular case, whether the foreign interests presented for approval by the licensee are in the public interest consistent with section 310(b)(4), and accords deference to the expertise of the relevant Executive Branch agencies relating to trade policy as well as national security, law enforcement, and foreign policy matters. In sum, the Petition does not identify particular procedures adopted in the 2016 Foreign Ownership Report and Order that Petitioner believes should be changed or explain with specificity how Petitioner believes the Commission should implement any such changes.

4. The Order on Reconsideration also finds that the Petition raises no relevant new arguments and merely echoes Petitioner's earlier arguments, made in response to the 2015 Foreign Ownership NPRM, that taking the proposed action would raise trade concerns contrary to the public interest. The Commission, however, addressed this issue in the 2016 Foreign Ownership Report and Order, finding that the relevant Executive Branch agencies will continue to review foreign ownership petitions for declaratory ruling filed pursuant to section 310(b)(4) of

the Act, where appropriate, and advise the Commission of any national security, law enforcement, foreign policy, or trade policy concerns. The Commission found that this review process will continue to address concerns raised by a particular foreign investment in the broadcasting context, and specifically Petitioner's concerns about what it characterizes as a "unilateral trade concession." In extending the procedures applicable to common carrier licensees to broadcast licensees, the Commission concluded that the streamlined common carrier procedures for reviewing foreign ownership petitions create an efficient process that benefits filers without harm to the public. These changes in procedure were not intended to have any substantive effect on Executive Branch agency review of these petitions, and there is no reason to believe that the Commission's action in the 2016 Foreign Ownership Report and Order will in fact have any such effect. And Petitioner has suggested nothing that indicates otherwise.

5. In sum, the Commission fully considered Petitioner's earlier arguments and explained in the 2016 Foreign Ownership Report and Order the reasons for the Commission's decisions. Moreover, to the extent they can be discerned, Petitioner's real concerns appear to be about the substantive evaluation of foreign ownership in broadcasting as it may relate to trade policy. The 2016 Foreign Ownership Report and Order, however, only streamlined the procedures for seeking an evaluation. It did not address the substantive criteria for the evaluation. The Petition, therefore, also warrants dismissal for relating to matters outside the scope of the 2016 Foreign Ownership Report and Order.

6. The Petition also fails to demonstrate any material error, omission, or reason warranting reconsideration of the 2016 Foreign Ownership Report and Order. The Petition does not identify any basis in the statute or relevant authority that would prohibit the Commission from adopting the streamlined procedures. As discussed, Petitioner's generalized claims and

requests throughout the Petition are unsupported by evidence or analysis. To the extent Petitioner repeats earlier arguments that the Commission fully considered and rejected, and raises no relevant new arguments that warrant consideration, the Order on Reconsideration finds that the Petition fails to identify any material error, omission, or reason warranting reconsideration of the 2016 Foreign Ownership Report and Order.

7. Finally, the Order on Reconsideration notes that Petitioner's ex parte submission does not cure the Petition's deficiencies. (Petitioner sent "Reply Comments" via email to a number of recipients, including members of the Commission. The Commission treated these "Reply Comments" as an ex parte submission for the purpose of enabling full consideration of the record. However, Petitioner's "Reply Comments" to the Petition were not properly filed in accordance with the Commission's rules.) Petitioner's ex parte submission does not state with particularity the respects in which Petitioner believes the Commission's action in the 2016 Foreign Ownership Report and Order should be changed; relies on arguments that the Commission fully considered and rejected in the 2016 Foreign Ownership Report and Order; and fails to identify any material error, omission, or reason warranting reconsideration. (To the extent Petitioner raises issues related to other matters he has pending before the Commission, those matters were not addressed in the Order on Reconsideration.) Accordingly, for the reasons stated above, the Petition is dismissed pursuant to section 1.429 of the Commission's rules.

Ordering Clauses

8. Accordingly, IT IS ORDERED that, pursuant to sections 5(c) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), 405, and sections 0.51, 0.61, 0.261, 0.283, 1.429(c), and 1.429(l) of the Commission's rules, 47 CFR 0.51, 0.61, 0.261, 0.283,

1.429(c), 1.429(l), the Petition for Reconsideration filed by William J. Kirsch in this proceeding IS DISMISSED.

9. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 CFR 1.103, this Order IS EFFECTIVE upon release. Applications for review under section 1.115 of the Commission's rules, 47 CFR 1.115, may be filed within thirty days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION.

Troy Tanner,
Deputy Chief, International Bureau.

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